THE
MADRAS LAW JOURNAL.

VOL.] DECEMBER, 1925. [XLIX.

LAW REPORTS*

V.—English Reports.

Dr. Bigelow's Placita Anglo-Normanica gives us the earliest cases decided after the Norman Conquest. It takes us back to the time of William the Conqueror. Another publication known as Rotuli Curiae Regis gives extracts from Court records of cases decided between 1194—1199. We have not got Court records for any earlier period. One explanation given for this is that when legal memory was declared not to extend beyond the first year of Richard I, the earlier records ceased to have value and were neglected. Of course, an equally plausible suggestion is that no records were maintained before that date and therefore that date was fixed as the starting point for legal memory. The records of those early times frequently contain the Judges' reasons for their judgment, but the practice ceased some time afterwards. Accounts of some cases (and sometimes in great detail too) are given by old monkish historians and some cases are found elsewhere also. It is from sources like these that the early cases reported in the State trials are extracted. So also Jenkins gives us some early cases in his Centuries. He was a Welsh Judge and a contemporary of Coke. He compiled them during the period of enforced leisure while in jail under the orders of the Long Parliament. It consists in the main of abstracts from the Abridgments of Fitz Herbert, Statham and Brook, from the Year-Books, from certain other reports down to Coke and also from certain unpublished manuscripts. The work is arranged in books, each consisting of a hundred cases and was hence called Centuries. Bracton in his treatise cites not less than thousand cases of his own time and prior. It appears he had also a note book of cases from 1238 up to his

*The fifth of a series of lectures arranged by the University of Madras delivered by Mr. B. Sitarama Rao, Vakil, High Court.

time compiled from the records of the Court. It is idle to call all these reports. In later times when the value of precedents came to be recognised, and reports became a regular institution, people came to have an exaggerated notion of the importance of reports and fancied that they must have been ever present. There are more tangible references, however, to the reports of the time of Edward I, in the writings of Hale. In the Year Books a portion of the first volume deals with Edward I's reign, but it consists of mere extracts from the records of the Exchequer. The practice of reporting seems to have begun some time during that reign. The Year Books are the result.

They cover the long period from 1307 to 1537 with some occasional gaps. As I said before, out of these for the period of Edward I we have no regular report. Even, when they commence, they are far from being like the reports of to-day. They are something like a newspaper report—an exact transcript of what took place in the Court, of the statements of Counsel, the observation of Judges whether strictly relevant to the case or not, and even the observations of the members of the bar present. Occasionally Judges read a lecture in the course of the arguments for the benefit of the apprentices and that too is recorded. The moods of the Judges are noted. Interspersed, one finds also the views of the reporter as to the merits of the performance of the Judges and the practitioners concerned. Sometimes the report of a case ends with the arguments of the counsel and sometimes it ends with a day's proceedings. In some cases judgments, it is stated, would follow, but they never follow, either because the reporter was not present when the judgment was delivered and he had no access to the rolls of the Court from which he could give the judgment or because no judgment was delivered or because he did not care how the judgment went. The earliest of these reports give no dates, nor do they arrange matter chronologically. Rather they distribute matter under suitable heads after the manner of the later printed abridgments. Even when chronological order came to be adopted (it is this that gives them their distinctive name) the writers are not particular about assigning dates. Sometimes names of the parties are not given. Sometimes they are wrongly given. As years went on reporting became a regular pursuit and also became more efficient. For instance, the Book of Assizes, one of the Year Books, reports in a style

very different from that of the other Year Books of Edward III's reign. That is to say, it is more concise and generally gives a gist of the argument and the decision rather than the actual report of the proceedings. The Longo Quinto seems to be even a more elaborate effort. Naturally, the reporters became more skilled as time went on. It was this skill that made later writers like Plowden and Coke to fancy that these reporters were official reporters.This view has now been demonstrated to be wrong. They were unofficial reporters—in the beginning possibly mere students or apprentices, but, as time went on, from a student's note-book, it grew into a regular report. The personal details become fewer and the report of the case becomes the main thing. Naturally, with the more frequent citation of cases, the need for reports became more pressing and the supply also became proportionately more efficient. From the Year Books we see that the Judges and the Sergeants belong to the same order. The Court asks for their opinion. The reporter records their dissent or disapproval. Oftentimes, their opinion is regarded with more consideration by the reporter than the dicta of the Judges. It was the period of professional development of the Common Law, the nearest approximation, in fact, in English Law, to the growth of the law by *responsa prudentum,* we have under the Roman system.

The reason why so often only pleadings and discussions are given and not the judgment is that at that point of English legal history the rules of pleadings and the issue of processes were much more important than rules of substantive law. So far as law was concerned there was little or no dispute. If a man had his proper legal formula, called writ, his remedy followed as a matter of course. If he had not his legal formula, or if his facts did not square with the formula equally clearly, he failed. The proper formula was therefore the first essential. The proper statement of the case was the next essential. If, as we have shown in the last lecture, there was any trouble of duplicity or inconsistency in the pleading, the action failed. It was the duty of the practitioner to avoid these pitfalls. Hence, in an action, what interested a practitioner was that portion of the proceedings in which the pleadings were discussed. In the beginning there was no examination of witnesses; all questions of fact were left to the jury who had to decide the case on their personal knowledge. So that the question of venue or the locality from which the jury had to be summoned was very material and discussion

about it figures naturally very largely in the Year Books. These Year Books are in French. French became the Court language in William the Conqueror's time and continued so till the time of Edward III who ordered that "all pleas should be pleaded, shown, defended, answered, debated and judged in the English language but entered and enrolled in Latin (36 Ed. III, c. 15). Latin continued in use until the time of Oliver Cromwell when English took its place. On Restoration Latin was restored to its old place and continued to occupy that position until the passing of 4 George II, c. 26 which directed that all proceedings should be in English. These Year Books are considered to possess very high authenticity though there are indications in them that the reporters did not understand sometimes what the Judges were saying. Indistinctness is not the monopoly of the Judges at present ; they were indistinct at times also then. The reports are, also, at times very confusing. There is little to indicate what words are of the Bench and what of the bar. All parties seem to be constantly interrupting each other in the most disputatious style and the reader is puzzled to say who is the Judge and who is the counsel.

The cases reported in these series are mostly from the Common Bench as the Common Pleas used to be called then. The work of the Sergeants lay mostly in that Court and the reporters also confined their attention mainly to that Court. The earliest of the Year Books extant date from 1292 and continue up to 1307. These are recent publications from original manuscripts. The next of the series cover the period 1307-1328. These are called Maynard's Edward I and II because they did not form part of the editions of the Year Books prior to 1678 but were published in that year for the first time by Sir John Maynard, a distinguished lawyer of the day, from ancient manuscripts. The volume dealing with the period 1328 to 1338 is cited as the first part of Edward III. It contains a continuous and well-reported series. After 1338 there is a gap for seven years till we come to the next volume. There are manuscript Year Books of these years still unpublished. The next volume cited as second part of Edward III relates to the period between 1344 and 1367. The next two parts are cited as the third of Edward III and are also known as Quadragesm. The next part of the reign of Edward III is cited as Liber Assizarum or the Book of Assize. It contains cases through every year of the reign and is referred to by Coke as a book of great authority. The last two parts of

Edward III were preferred by old lawyers to the earlier parts. The reports here are more clear and concise and occasionally one stumbles upon a case that turns on points of law that interest even a modern lawyer. But for the most part they are filled with interminable wrangles about the forms and pleadings of real actions, matters naturally of the highest interest to the mediæval lawyer though happily of no interest to the modern. In the Quadragesm there is recorded a witty saying of Cavendish, a Chief Justice of Edward III's time, to which reference may be made. A question having arisen about a lady's age whether she was within age or not, the counsel pressed the Judge to have her before him so that by inspection he might be satisfied as to her age. The Judge is said to have remarked that " there is no man in England who can rightly tell if a woman has reached majority or not, for some women who are of thirty years of age wish to appear but seventeen ". There is no published Year Book of Richard II, the so-called Year Book of his time being Bellew's cases Temp. Richard II which is but an abridgment of a true Year Book. There seems to be such a genuine manuscript Year Book in the British Museum. It has not yet been published. The Year Book of Henry VI is complete so far as years go but incomplete as regards terms no less than 20 out of 44 terms being unrepresented. The reports for the first year are very meagre but for subsequent years they are fuller. It is in this series that the case of " Rival Grammar Schools " which is cited to illustrate the rule of *Damnum Absque Injuria* is reported. In the Year Book of Henry V the first case pronouncing against agreements in restraint of trade is reported. These reports are not so highly regarded as the reports of the last 12 years of Edward III. The Year Book of Henry VI is in two parts, the second part being considered particularly valuable. Along with the last part of the Year Book of Edward III, the Books of Assizes of Edward IV and Henry VIII this Year Book was specially recommended by Sir Mathew Hale to the young student. That was about the time of Maynard, the lawyer who refreshed himself after the fatigues of a long journey with a volume of these reports. The Year Book of Edward IV is in two parts, the second being called Longo Quinto because it is confined to cases heard in the fifth year. Both parts, particularly the last, is said to be full of excellent, that is for us, curious, learning. In these several terms are omitted though no whole year is omitted.

The next volume of the Year Book deals with the period 1484-1537. The Year Book of Richard III records a conferring in person of the King with the Judges. The Judges answer the King's questions with intelligence and candour but at the same time firmly say that they alone have the right to render legal judgment on the questions raised and not the King. In the Year Books of Henry VII the Judges and counsel are found citing cases as well as text-books like Bracton. The Year Books of Henry VII seem to be inferior to the earlier Year Books.

There are constant references in these Year Books to the abridgments and *vice versa.* In some cases where the Year Books do not give the judgments but only the arguments the abridgments give the judgments. To one of the early Year Books a Calendarium or extracts from the rools is attached. In these Year Books you find not only a groping for the correct method of expressing the law but also for the right method of distributing the matter. It took a long time before it was finally settled that the pleadings, facts, arguments and judgments must appear in the same place. Various experiments were tried, of giving pleas in one place, facts and arguments in another—judgments in a third before the present plan was finally adopted. Though the lawyers of the 17th century commended these books to students, they became gradually forgotten and as early as 1809 Lord Mansfield is reported to have observed when a case from 7 Edward III was cited, that it was a great way to go back for a precedent. Though the march of time has thrown most of the Year Books into the limbo of forgotten things and none but antiquarians and scholars seeking for the beginning of legal ideas are likely to go to them, we find them occasionally cited even now. As late as (1921) A. C. 590 we find a reference made to Year Books. [*See* also (1911) 2 K. B. 843]. To the student of the history of the law, these Year Books are a mine of information. They show the law in the making, though the complicated procedure of the time make them somewhat difficult of comprehension. They show how at one time, the forms of action were all in all, how in the absence of a form of action, there was no remedy at law, how the Chancery Courts used to issue writs to remedy these defects, how and when the parol contracts came to be enforced, and when the epoch-making writ of assumpist was introduced. One very remarkable feature that is noticeable in these reports

is the long, laborious and subtle arguments that are addressed. Cases used to be argued several times and judgments were sometimes not delivered for years on end. This state of affairs continued till the time of Lord Mansfield who put an end to those lengthy hearings and introduced the practice of delivering judgments immediately the arguments were over.

Benloe and Dalison's Reports of the Common Pleas cover the period 1486-1580, thus overlapping the period of the Year Books. Dalison was Chief Justice of the King's Bench during the reign of Mary. It may be said of his and some other reports of the time that they contain not only the cases reported by the people whose names they bear but also those taken by those that went before them and also additions made subsequently by others. It comes from the fact that they are lawyer's note-books, possibly not intended for publication, and in fact published long after the death of the reporter. These reports merely give a short statement of the facts and the point decided. Keilwey's Report of the K. B. and C. P. cover the period between 1496-1531. These record many decisions found also in the other reports and some more in addition. Mosses's, K. B., Ex. and Ch. Reports are also regarded as authorities. They cover the period from 1512 to 1621. In the midst of prosaic narration of points and decisions, we find there, a real romance of two lovers resolving upon suicide but one of them the woman finally receding. The question was as to whether she was guilty of murder. Many learned arguments were addressed but the final conclusion is not stated.

Dyer's Reports are the notes of Chief Justice Dyer of the Common Pleas, sometimes also Judge of the Queen's Bench. They are not as full as later reports but resemble more the concise notes of a man of business, containing an accurate statement of the case, with the objections and answers in as short a compass as possible. This is the first book to be called reports. The previous reports were called annals, commentaries or cases. Brooke, the author of a well-known abridgment, is also responsible for a report known as Brooke's new cases, (1515-1558). Anderson, whose reports cover the period from 1534-1604, was the Chief Justice of the Common Pleas and an ardent supporter of the Protestant religion. Though not famed for toleration, he was a fearless supporter of the dignity of his office and opposed the pretensions of Elizabeth to interfere with the Judges. Leonard's reports have been

commended by such great authorities as Sugden and Nottingham. Plowden's Reports (1550-1580) are among the best reports of any time. He thoroughly understood his duty as a reporter. Before a case came to be argued he used to have copies made of the record and took pains to study the points of law arising. He attended the arguments. He gives them always following the course of reasoning precisely, with the precedents quoted, in the style of a formal debate. He gives the judgment of each of the Judges separately with the reasons given. To ensure accuracy he used to submit his reports to the Judges and the Sergeants concerned in each case. The reports are very authoritative and have drawn great encomiums from Judges and scholars. They are cited even to this day. They are one of the few old reports published during the author's lifetime. Plowden was not, unlike most of the other reporters, a Chief Justice or even a Judge. Being a Roman Catholic, he was denied the privilege of becoming one. Noy, who was the Attorney-General of Charles I, has also a report to his credit. They are a loose collection of notes not all made by Noy himself with no statement of facts and no arguments. Justice Bueler said of this report that it has always been considered as a bad authority and Lord Thurlow concurred with him (3 Term Rep. 424). The book is not an imposture but seems to be an abridgment of Noy's note-book by one of his students. Carlyle has many hard words to say of this lawyer.

Brownlow and Goldsborough were Prothonotaries of the Common Pleas and report mostly practice cases. Some of the cases reported here are found in Yelverton verbatim—probably they were copied from the latter. Next we come to Coke whose reports are called the reports—*i. e.*, reports *par excellence*. The reporting cannot be claimed to be in any sense ideal. In this respect Coke contrasts very unfavourably with Plowden. He first gives a statement of facts and then what was moved, then the substance of what was said on both sides and, finally, the report is wound up with the resolutions of the Court. There is very little arrangement. In stating the arguments case is followed up by case, quotation leads into quotation, illustration opens into illustration and successive inference is made the premise for a new conclusion. The whole thing is a labyrinth of conclusions, exceptions, parantheses and so forth. The array is no doubt very imposing but the arguments and conclusions are far from being clear, The first eleven volumes were published

during the lifetime of Coke and are of the very highest authority,his own authority being as great and even much greater than that of Judges whose judgments he reports. The 12th and 13th volumes appeared after his death and are more or less apocryphal. There was much criticism of Coke as to his having given as Judge's opinions, his own opinions or as having misreported cases. But with all that, we have the testimony of Lord Bacon himself who was his enemy that but for his labour, "law by this time had been almost like a ship without a ballast." Coke was Attorney-General, then Chief Justice of the Common Pleas and finally Chief Justice of the King's Bench. Coke's reports are in French.

Croke's Reports (1582-1641) by Croke, Judge successively of the Common Pleas and the King's Bench and Yelverton's Reports (1603-1613) by Yelverton, a Justice of the King's Bench, command great authority. Even where the rolls do not support them, their authority has been upheld in preference to the record as such omissions are not rare and Justices Coke and Yelverton were men of integrity and could not be believed to have made any statement without verifying it. Lord Hobart, who succeeded Lord Coke as Chief Justice of the Common Pleas, is the author of a set of reports dealing with the period 1603 to 1625 and giving also some cases of Elizabeth's time in addition. They were published after his death by a careless editor but was subsequently corrected by Lord Nottingham. They contain marginal annotations by Lord Hobart himself. Though somewhat defective in method, they are admitted to be a standard work of their day. Lord Hobart is remembered mostly for his reputed observation about the distinction between Common Law and Statute Law, " that the Statute is like a tyrant; where he comes, he makes all void ; but the Common Law is like a nursing father and makes void only that part where the fault is and leaves the rest." Ley, Chief Justice of the King's Bench in 1621, reports cases of King's Bench, Common Pleas, Court of Wards and Star Chamber of the years 1608 to 1629. Unlike most of the other reports hitherto referred to, it has the appearance of a report in that it gives an orderly statement of facts, the question which arose and finally the adjudication by the Court. The Court of Wards was established in 1542 to take care of infants and adults and after a career of mismanagement was abolished in the time of Charles II.

V.

Rolle, sometime Judge, is the author of a report as well as of an abridgment which also may well be reckoned as a report as it reports many cases not elsewhere reported. He is spoken of very highly by Sir Mathew Hale in the preface written by him to Rolle's abridgment. Sir H. Calthorp was a Recorder of London and the reports that bear his name have had a certificate from Sir John Burrow, that they are prettily reported and elaborate. Bulstrode is another reporter whose reputation is not high and in fact in one case, his reporting was found inaccurate on comparison with the rolls. Hutton was a Justice of the Common Pleas and his reports purport to be reports of causes heard by himself and copied by his own hand. The printed volume seems to be a selection of cases from Hutton's note-book. Palmer's Reports deal with cases from 1619 to 1629. He became an Attorney-General. Some of the cases reported by him must have been copied from others. A Chief Justice of Ireland and then successively a Judge of the Common Pleas and of the King's Bench, Sir William Jones is the author of Reports, cited as 1st of Jones, a work of authority. Judge Winche's Reports (1621-1625) have been commended by Lord Kenyon as reporting cases well, but the authorship is wrongly ascribed to the Judge, It is a translation from a French original by an unknown author. Latch has been considered as among the least accurate of all the reporters. Littleton's Reports (1626-1632) deal with prohibitions. It claims, unlike some of our modern publications, which claim not to have omitted any cases reported elsewhere, to have left out all cases elsewhere reported but like all such proclamations, wrongly. Lord Campbell thought it was not very valuable. Littleton was Chief Justice of the Common Pleas. He was a little liberal in his ideas where pagans were concerned. Whereas Justice Brooke, the author of the well-known abridgment of Henry VIII's time, treated a pagan as on a level with an outlaw and rebel and considerably below a dog and thought that if a Christian beat a heathen the latter can have no action and Sir Francis Moore styles a Turk a "*hostis communis* to all Christians" and Lord Coke commends Justice Brooke's dictum adding that "all infidels are in law perpetual enemies for, between them as with the devils whose subjects they be, and the Christians, is perpetual hostility and can be no peace." Littleton delivered himself of the humane sentiment that though "there be a difference between the religion of infidel natives and

ours that does not oblige us to be enemies of their persons; that they are God's creatures and of the same kind as we are, and that it would be a sin to do bodily harm to them." It is a far cry from this to the modern doctrine that the State is not Christian at all, and a legacy even to subvert Christianity cannot be pronounced illegal on that ground. Hetley was under Lord Bacon's scheme appointed an Official Reporter but his reports (1627-1632) show no particular marks of skill, information or authenticity. Clayton's reports are reports of the Assizes and though not of much use practically may be read for the curiosity of the cases he reports. March (1639-1643), whose reports go under the name of March's New Cases, was pronounced by Chief Justice Parker (10 Mod. 138) to be an indifferent reporter but "is not to be rejected" according to another learned person. Star Chamber cases give us an idea of the doings of the Star Chamber during its existence. So far the reports were mostly in French and the records in Latin. Cromwell's Government prohibited the use of foreign tongues in Courts. As a result English reports appeared. Style's reports deal with the period and are valuable as the only records of the judgments of Rolle and Glyn, the Chief Justices of Cromwell. The King's Bench was then called the Upper Bench. They were published by the author himself. Aleyn is another reporter of the period. In Aleyn, the case of *Paradine* v. *Jane* is reported where it is laid down that accident or inevitable necessity does not exonerate a man from liability which he has undertaken. The cases in this report find a place in Viner's abridgment without any dissent or disapproval. The report of *Manby* v. *Scott*, one of the leading cases in Smith's Leading Cases, is taken from Siderfin's reports. Siderfin has been valued differently by different people, Holt's opinion being against him. It was published after his death and like all old reports, some cases are not intelligible and some are wrongly reported. Making allowances for such errors, the report seems to be fairly good. Hardres reported Exchequer cases, the judgments being of Sir Mathew Hale. The arguments are given at much greater length than Judgments. He argued many if not most of the cases reported by him.The report is of authirity.

Most of the reports to which we have been referring were posthumous publications. Some of the reports like Moore Dyer, Croke, Rolle, Yelverton, Anderson Jones, Leonard and Godbolt were edited by responsible persons who had manuscripts

in their possession. But in the case of Noy, Popham, Winch, Littleton, March, Hutton, Lane, Hetley, there is no account of the manuscripts and not even the name of the editor was given. They are mostly lawyer's note books into which he would copy whatever of the early cases he got and add those of his own. Further additions would be made by people into whose hands the notes fell, with all the errors the process would involve. Add to it, the errors in transcription which must have been great and the wonder is that they are even as good as they are. Some of these reports were published as mere printer's speculations; sometimes with a lawyer's certificate as in the case of 12 Coke, which was published with a certificate from Bulstrode who had afterwards to explain away his certificate. They were most of them not designed for the press. Up to 1648, the only reports in print were certain of the Year Books, Plowden, Dyer, Keilwey Bellewe, Dalison, first parts of Coke, Davies, Hobart. After that came all the other reports which have been described by a contemporary as "flying squadrons of reports," In 1657, in an address to students, Grimston said referring to them " a multitude of flying reports have of late surreptitiously crept forth." These remarks were made with reference to Bridgman, Noy, Sevile, Lane, Ley, Hutton, Hetley and Aleyn.

All the reports we have hitherto referred to are Common Law reports. For the period we have dealt with we have hardly any reports in Chancery. That is a period when precedents had hardly come to be recognised in Chancery. But some idea of the progress of the equity law can be had from Chancery Calendars published by the command of George IV in pursuance of an address of the Commons. They are Calendars of Proceedings in Chancery in the time of Elizabeth to which are prefixed examples of earlier proceedings in that Court from the time of Richard II. They show that in early times, the Chancery Courts had much less to do with uses than is supposed, the main ground for their interference urged being that the defendant was powerful and that it was impossible to get justice in King's Courts. They also show that all the grounds of equity subsequently recognised were also recognised from the time of Henry VI though the practice was not systematised. The real credit of Nottingham and others is to have fixed the limits of equity jurisdiction and to have enunciated clearly the principles. Acta Cancellarii is a recent publication giving extracts from the Court

records from 1545 to the end of the reign of Queen Elizabeth. Cary's reports cover the period (1557-1604) and contain numerous decisions of Lord Ellesmere. The regular series of Chancery Reports are said to commence with Cary. Choice cases in Chancery form the last few pages of a work called "The Practice of the High Court of Chancery". It is of very little practical value but the report is entertaining reading owing to its picturesqueness and dramatic colouring. Tothill's book was published after his death and according to Chancellor Kent, it is so very imperfect and so destitute of facts and circumstances as to be altogether unfit to serve as a guide and unworthy to be cited as an authority, but it is of great historical interest as presenting the later equity jurisdiction in its rudimentary aspects. Dicken's reports cover the period from 1559-1798. These reports were prepared from Dicken's notes after his death. He was a Registrar of the Court of Chancery and cases where his own suggestion to the Court was accepted are valuable according to Lord Cottenham.

Reports in Chancery now known as Chancery Reports purport to report cases of the reign of Charles I, Charles II, James II, William III and Queen Anne. The first volume of the first edition appeared in 1693. The book as it is at present is in a line of succession from certain precedent works, now merged in it. The first two parts are mere extracts from Registrar's books and as such loose and meagre and possess little authority. The later parts seem to be good about which later.

SUMMARY OF ENGLISH CASES.

GRAINGER *v.* MAXWELL, (1925) 2 K. B. 376.

Income-tax—Computation of—Exchequer Bonds and War Loan securities—Redemption of War Bonds prior to year of assessment—Interest received in preceding year—If basis of taxation—Income-tax Act, 1918, *Sch. D, Case III, Rr.* 1 *and* 2.

An assessee held certain Exchequer Bonds and War Loan securities yielding interest. The former were redeemed in February, 1920, but the latter were yielding interest during the year ending 5th April, 1921. Under the Income-tax Act, 1918, Sch. D, Case III the Inspector of Taxes claimed that the basis of calculation was the full amount of interest received within the previous year ending with 5th April, 1920 and that

the assessee was liable to pay on that basis. *Held*, the liability to pay income-tax depended upon there being in the year of assessment profits of the kind assessed and recourse to the previous year was not permissible when there was nothing in the year of assessment to measure. The assessee would therefore not be liable to pay tax on interest from Exchequer Bonds.

LAURIE AND MOREWOOD *v.* JOHN DUDIN AND SONS, (1925) 2 K. B. 383.

Sale of goods—Delivery note—Goods in the possession of wharfinger—Larger bulk—Note sent to wharfinger—Title if passes—Estoppel—Delivery note if a document of title—Sale of Goods Act, Ss. 25, 47.

A person had some 618 quarters of maize lying with the defendants who were wharfingers. He sold to *X* 200 quarters of it and gave him a delivery note, which in turn was sold to the plaintiffs and they presented to the defendants a delivery order in the following terms :—" Deliver to Messrs. Laurie and Morewood 200 quarters maize " and at the same time the original delivery note was handed over to the defendants who noted it in their stock book. A few days later the owner countermanded delivery and when the plaintiffs applied for the maize sold to them, the defendants refused delivery. In an action against the defendants, *Held*, (1) according to English law, the effect of the delivery order was not to make the plaintiffs tenants-in-common of the whole mass. No right passes to the vendee until the vendor has made his selection ; (2) the receipt of the delivery order in the ordinary course of business without acknowledging it cannot estop the defendants from alleging that the plaintiffs are not the owners ; and (3) the delivery note in the case was not a document of title within the meaning of the Sale of Goods Act.

ISAACS AND SONS, LTD. *v.* COOK, (1925) 2 K. B. 391.

Defamation—Libel—Privilege—Report by High Commissioner in London to Prime Minister of Australia—Commercial matters.

A report sent to the Prime Minister of Australia by the Australian High Commissioner in London containing defamatory statements is absolutely privileged as it is a communication relating to matters of State. The fact that it relates to commercial matters does not make it any the less an Act of State.

BENTON *v.* CAMPBELL, PARKER AND CO., LTD., (1925) 2 K. B. 410.

Principal and agent—Sale by auctioneer—Fact of agency disclosed, but not name of principal—Absence of title—Liability of auctioneer.

An auctioneer who sells a specific chattel by auction, disclosing the fact of agency but not naming his principal and pays over the proceeds of sale to the principal is not liable in damages to the buyer if it afterwards appears that the principal had no right to sell.

Where an agent purports to make a contract for a principal, disclosing the fact that he is acting as an agent but not naming his principal, the rule is that unless a contrary intention appears, he makes himself personally liable on the authorized contract. It is presumed that the other party is unwilling to contract solely with an unknown man, but only if the agent will make himself personally liable if called on. But this presumption does not apply in the case of a sale of a specific chattel which the buyer knows is not the property of the agent.

LANKESTER *v.* LANKESTER, (1925) P. 114.

Divorce—Adultery—Connivance of husband—Invalid American divorce—Arrangement between husband and wife—Marriage of wife after divorce—Knowledge—Matrimonial Causes Act, Ss. 30 and 31.

An English husband and wife were erroneously advised that a divorce obtained in the United States of America would dissolve their marriage. They arranged to carry out the plan and the wife told the husband that after divorce she was going to marry *X*. The divorce was effected as planned and the wife married *X*. Subsequently the husband being informed that the divorce was not valid in England, applied for divorce in the English Courts on the ground of his wife's adultery with *X*. *Held*, his conduct amounted to connivance and even if it did not, it was wilful misconduct which conduced to the adultery and a Matrimonial Court could in its discretion refuse to grant a divorce.

THE LORD STRATHCONA, (1925) P. 143.

Shipping—Mortgagee applying for sale—Charterparty—Notice of—Order for sale—Right of charterers to intervene—Inability of shipowner to perform contract—Effect of.

The mortgagees of a ship obtained an order declaring the validity of their mortgage and directing the sale of the ship, the owners being *ex parte*. Thereupon certain persons to whom the vessel had been chartered for a number of seasons intervened, disputing the validity of the mortgage, and claiming that the charterparty was binding on the mortgagees as they had notice of it at the time of the mortgage and for an injunction restraining the sale. *Held*, (1) they had no *locus standi* to dispute the validity of the mortgage ; and (2) where the owners themselves were financially in such a position that they were unable to perform the terms of the charterparty, a sale by the mortgagees would not interfere with the rights of the charterers, as the charterparty had become impossible of performance.

Quaere :—Whether a charterparty with the owner of a ship bind a subsequent mortgage with notice ? Case-law referred to.

In re TAYLOR : HOCKLEY *v.* O'NEAL, (1925) 1 Ch. 739.

Will—Construction—Trust for maintenance—Child—When includes illegitimate child—Knowledge.

There was a direction in a will to the trustees appointed thereunder to hold a certain share " for the child or children of *X*, who being a son shall attain the age of twenty-one or being a daughter shall attain that age or marry ". *X* died in the lifetime of the testatrix, leaving only one daughter, but the child was born a few months before the marriage of its parents. The testatrix knew of the existence of the daughter, but not that it was illegitimate. On a question arising whether the provision in the will enured to the benefit of the child, *held*, the child was not entitled to benefit under the will.

Prima facie the words " child or children " mean only legitimate children and no other meaning can be given unless there is clear evidence in the will itself of an intention to establish another application of the words. This *prima facie* meaning can only be departed from in two classes of cases, *i. e.*, first, where it is impossible from the circumstances of the parties that any legitimate children could take under the bequest; and secondly, where on a just and proper construction, there is a clear intention to include illegitimate children also.

In re PORTER : PORTER *v.* PORTER, (1925) 1 Ch. 747.

Will—Construction—Bequest—Masonic temple—Balance for masonic charities—Bequest void for uncertainty.

A codicil attached to a will directed the executors to pay to the trustees of a masonic temple already erected by him " a sum of £10,000, the interest of such sum to be applied by the trustees to the maintenance and upkeep of the said masonic temple in the full and sole discretion of the said trustees, and the balance (if any) to be applied or paid annually in favour of any masonic charity or charities which the said trustees may in their full discretion select." On a summons being taken out to ascertain if the bequest was valid or not, *held,* the bequest to the masonic temple was not a good and charitable bequest, and involving, as it did, a perpetuity must fail. As the primary gift itself was not sufficiently definite, it could not be ascertained whether any surplus would be left over for the ultimate charities and hence the whole bequest was void.

UNION CASTLE MAIL STEAMSHIP COMPANY *v.* SENA SUGAR ESTATES, LTD., (1925) A. C. 782 : 94 L J K B 877.

Contract—Construction—Agreement to ship " all sugar which the shippers shall have for shipment from B"—Breach of—Through bill of lading—Effect of.

The owners of a sugar estate used to send all their sugar from a small port C, which was not accessible to ocean-going steamers, to B by lighters and from there it used to be loaded into the ocean-going steamers. An agreement was made between the owners and a steamship company, whereby the owners agreed to ship and the shippers agreed to carry " all the sugar which the shippers shall have for shipment from B " for a fixed period. During the period of the agreement the owners sent sugar by another steamship company from C direct, through bills of lading being issued from C itself, though the process adopted was the same, *i. e.*, to send the sugar by lighters to B and then load it into ocean-going steamers. On an action for breach of the agreement, *held,* the issue of through bills of lading did not in any way affect the liability of the sugar estate owners, as the sugar fell within the agreement and ought to have been given over to the shippers under the agreement.

BUNGE Y BORN LIMITADA SOCIEDAD . . . *v.* BRIGHTMAN AND CO., (1925) A. C. 799 : 94 L. J. K. B. 840.

Shipping—Charterparty—Exception clause—Demurrage—Liability for—Loading prevented by Railway strike—Prohibition of export—Effect of.

Under the terms of a charterparty a ship was to be loaded with wheat or maize or rye. One clause provided that if the loading was prevented by reason of obstruction or stoppage in the railway service, the time for loading should not count during the continuance of such causes. Owing to a Railway strike, sufficient wheat was not forthcoming to load the ship within the lay days, but when wheat began to be loaded actually, the Government prohibited the export of wheat and the charterers after six days began to load maize. The shippers claimed demurrage. *Held,* as the obstruction in the railway service merely delayed the bringing in of the cargo and not the actual process of loading, it did not fall within the exception clause and hence demurrage was payable.

Per Lord Dunedin.—If an exception clause in a charterparty is intended to apply to the providing of cargo as distinguished from the loading proper, the intention must be expressed in words so clear as to admit of no ambiguity.

Per Lord Atkinson.—When the export of wheat was prohibited, the charterers had to make up their minds what was to be done in the altered condition of things and they were in law entitled to a reasonable time to determine how to deal with those altered conditions.

WING LEE *v.* D. C. LEW, (1925) A. C. 819.

Appeal—Appellate Court—Power of, to grant new trial—Discretion—Exercise of—Injustice to be prevented.

An Appellate Court's right to order a new trial is one based on discretion, but the discretion being judicial must be based on sound principles and cannot be arbitrarily exercised; but if the exercise of the discretion without control or limitation may produce what appears to be a manifest injustice, it is well within the power of the Court in exercising such a right to take steps to prevent that injustice should arise.

WIGMORE *v.* SUMMERSON, 94 L J K B 836.

Income-tax—Stock sold—Interest accrued—If taxable—Liability to super-tax—Income-tax Act, 1918, *Sch. D, Case III.*

When a security bearing interest which is not taxed at the source (*e.g.* War Loans) is sold by one person to another during

the currency of an interest period, an apportionment cannot be made for purposes of income-tax and the seller is not liable to pay tax on accrued income up to date of the sale. In such a case interest does not accrue *de die in diem*. The seller does not receive from the buyer the interest accrued up to the date of sale, but only the price of the expectancy of interest and that is not the subject of taxation.

Where a security which suffers tax on the interest by deduction is sold during the currency of an interest period, the seller is likewise not chargeable with super-tax on the accrued interest.

JOTTINGS AND CUTTINGS.

The Foreshore and Manorial Wastes.—*Blundell* v. *Catterall* (1821, 5 B. & Ald. 268) and *Brinckman* v. *Matley* (1904, 2 Ch. 313) were cases where the plaintiffs sued as lords of manors, and the foreshore was admittedly manorial waste. Thus the section should relegate the Holroyd judgment to the waste of overridden law. But is it possible for the foreshore to be waste other than manorial waste ? If so, it would not apply. Obviously, however, if the wayfarer who sees moor, down or beach before him has to ask himself "Is this waste really manorial ?" there is no virtue in the section. A presumption in his favour ought therefore to be implied, but the section would have been more satisfactory had it been expressed. When the foreshore is privately owned (and it is a common error to suppose that the Crown has retained any large portion of it, see *Moore on the Foreshore*, 3rd edit., p. 24), the Crown records of grants will no doubt show the position. For the places where the Crown has retained the foreshore, reference may be made to S. 208 of the Law of Property Act, 1925, to the effect that the Crown is bound by it, with certain exceptions which do not include the provisions of S. 193. Thus bathing off the foreshore round the whole coast of England and Wales should be allowable next year, except so far as it has been reclaimed from waste by the construction of harbours, wharves or other works. The Minister of Agriculture has power to make rules regulating the exercise of the new rights to prevent derogation of those of the owner, and in the case of the foreshore he will no doubt preserve the right of reclamation. The Holroyd judgment was largely based on the interference of a right of bathing with the right of reclamation, and has delayed the simple or common-

sense solution of a difficulty which can only have existed in lawyers' minds for a hundred years or more.

—*The Law Journal*, September 12, 1925, p. 786.

* * * * * * *

The Divorce Court and the Discretion.—"This discretion," said the President of the Probate, Divorce and Admiralty Division, in *Wilson* v. *Wilson* (1920, P. 20 at p. 22), "is not to be exercised eagerly, or indeed readily, but with some degree of stringency." He referred to the judicial discretion under the Matrimonial Causes Act, 1857, S. 31, to grant relief to a petitioner in divorce, who has himself been guilty of adultery. He gave four reasons which may satisfy the requirement of "stringency": the position and interests of the children; the interest of the woman with whom he has misconducted himself, that she may be in a position to marry him; the fact that withholding the decree will not be likely to reconcile husband and wife; and the interest of the husband himself that he shall re-marry and lead a respectable life. These are not all the available reasons, nor are all of them indispensable; but the sense of the decision is clear, that, whatever the reasons are, they must be of this quality and of an equivalent quantity. Meanwhile, for our present comment, it is important to note that the discretion remains absolutely with the Court, unfetterable by this or by any decision of principle (*Wickins* v. *Wickins*, 1918, P. 265, C. A.). With this preface, we may call attention to the observation of Bateson, J., in the case of *Hardy* v. *Hardy and Phillips* (*Times*, October 27): "The authorities show a steady relaxation in recent times of the strict rule of former days, depriving petitioners, who had themselves been guilty, of relief." We may add the observation of our own, that the most recent cases, in which the King's Proctor has intervened and the petitioner, caught concealing his own guilt, has prayed the discretion and obtained it, show a particular rapidity of this process of relaxation. The discretion is certainly now exercised "readily"; if progress continues proportionately, it will not be long before it is exercised "eagerly." As to the moralities and expediencies, it is not for us to comment; our remark goes to this alone, that every practitioner, concerned with a client who has a divorce matter or likely to be so concerned, would do well to note carefully just how far the relaxation of stringency is proceeding.

—*The Law Journal*, November 7, 1925, p. 906.

BOOK REVIEWS.

TRIAL OF RONALD TRUE. Edited by Donald Carswell— *Notable British Trials Series.* Messrs. Butterworth & Co., Ltd.

The trial of Ronald True which took place in 1922 at the Old Bailey before Mr. Justice M'Cardie is one of extraordinary interest not only to the layman, but to the lawyer and the medical practitioner as well, on account of the medico-legal dilemma which arose out of the plea of insanity. The layman will feel all the interest which usually attaches itself to a *cause celebre ;* but the lawyer's interest will mostly be in the application of the rules laid down by Her Majesty's Judges in answer to the Resolution of the House of Lords, arising out of M'Naughton's case of 1843 to a recent case, especially in the light of the developments of medical science during the last 80 years. The evidence, especially of Dr. East who was examined at length as a defence witness to support the plea of insanity will be of absorbing interest to the lawyer as well as the medical practitioner on account of the discussion of the principles as applied to various sets of facts.

The volume under review maintains all the well-known features of the Notable British Trials Series. It contains a neat and concise historical narration of the facts of the case, and a brief reference to the law relating to insanity as a ground of defence in order to enable the reader to appreciate and follow the course of the trial. The Appendix contains, among other things, the opinion of the Judges in M'Naughton's case of 1843 and also the report of the Committee presided over by Lord Justice Atkin on Insanity and Crime which was appointed by the then Lord Chancellor, Earl of Birkenhead, as a result of this sensational murder trial. We have great pleasure in bringing this volume to the notice of our readers.

SNELL'S PRINCIPLES OF EQUITY, 19th Edition Special Indian Edition, by Messrs. Cambray & Co.

We are so familiar with Snell's Principles of Equity as a text-book on the subject that no detailed review of its contents is called for ; but it is only necessary to refer to some of its features in the present edition. The far-reaching changes effected by the recent statutes relating to the Law of Property in England have rendered it desirable that a separate

chapter should be devoted to equitable estates, priorities and assignments. In other places, the changes effected by the new statutes have been incorporated ; and despite the mass of new material and the impossibility at present of disregarding altogether the law superseded after the year 1925 by the provisions of new statutes the size of the book has not increased substantially. We are sure that the book will still continue to hold its high place as a text-book and its usefulness both to the student and practitioner. This Special Indian Edition, a copy of which we are glad to acknowledge the receipt, has been published by Messrs. Cambray & Co., the enterprising law book-sellers and publishers of Calcutta and Madras.

GHOSH'S DIARIES.

We are glad to acknowledge receipt of Ghosh's popular Lawyer's Diary and Pocket Diary for 1926 published by Raj M. C. Sarkar & Sons, Calcutta.

[END OF VOLUME XLIX]